

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2258 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHANTADEVI ANIRUDDHLALJI GOSWAMI

Versus

STATE OF GUJARAT

Appearance:

MRS MADHUBEN SHARMA for Petitioner

MS KATHA GAJJAR APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 22/09/98

ORAL CAV JUDGEMENT

Rule. Ld. AGP Ms.Katha Gajjar, AGP waives service of Rule. At the request of ld. counsel appearing for the respective parties, the matter is taken up for final hearing today.

The petitioner has approached this Court under Article 226 of the Constitution of India alleging that she is the widow of late Shri Aniruddhlalji Goswami who

expired on 16.6.1995 who was a freedom fighter. According to the petitioner, her husband had applied for pension under the Scheme of Pension for Freedom Fighters, 1960 in the month of February 1991. As per the Scheme,

certain papers were to be produced before the competent authority including the certificate of imprisonment undergone by the husband of the petitioner issued by the jail authority. According to the petitioner, the jail authority had replied that the name of the husband of the petitioner could not be found in the registers available with the jail authority. It is submitted that according to the policy of the Government as well as under the Scheme, certificate given by the current or Ex.MLA (Member of Legislative Assembly) and/or certificate of co-prisoner who had undergone imprisonment as Freedom Fighter would serve the purpose. It is the say of the petitioner that such certificates were produced before the authority concerned. According to the petitioner, despite of production of all the relevant documents and material documents, respondent no.3 had rejected the application of the husband of the petitioner on 10.2.1993.

On negation of application, husband of the petitioner preferred Special Civil Application No. 5199/93 before this Court and after hearing the parties, the petitioner's husband was directed to comply with the requirements of the letter dated 6.10.1994 referred to in the said litigation and certificate of imprisonment issued by jail authorities was not required to be produced before the pension sanctioning authority. According to the petitioner, all medical papers were tendered before the respondent authority and respondents were supposed to decide the application of the husband of the petitioner within the stipulated time limit.

Unfortunately, husband of the petitioner succumbed to the infirmities developed with the growing age and died on 16.6.1995.

The petitioner has sought certain reliefs, but for the purpose of this judgment, reliefs (a) and (b) are relevant which I would like to reproduce herein below:-

- (A) Be pleased to direct the respondents not to insist upon the certificate of imprisonment of her husband in light of the resolution passed by the government and be pleased to further direct the respondent to accept the application of her husband for pension in light of the declaration made by the government.

(B) Be pleased to direct the respondents to pay the pension from the date of the application or in alternative be pleased to direct him to pay the pension from the date of order passed by this Hon'ble Court.

Ld.AGP appearing for the respondents has not challenged one fact which is very much relevant and material that the certified issued by the co-prisoner was tendered by the husband of the petitioner and the order of this Court passed in Spl.C.A. No. 5199/93 dated 7.10.1993 (Coram: S.D.Shah, J) was complied with by the husband of the petitioner. No resistance is lodged by the respondent State by filing affidavit-in-reply. The application for pension submitted by the husband of the petitioner was rejected mainly on the ground that there was no adequate proof about the imprisonment of the husband of the petitioner, but in view of the observations made by the Supreme Court in the case of Mukundlal Bhandari & Ors. v/s Union of India and Ors. reported in AIR 1993 SC 2127, the certificate issued by

or given by the co-prisoner should be accepted as a sufficient proof. The prayer for pension under the Scheme framed for Freedom-fighters normally should not be rejected on technical ground or excuse when other substantial proof or evidence is available or is made available to the State. Submission of ld. counsel appearing for the petitioner that pension should be granted from the date of the application made by the husband of the petitioner is also justified and for this purpose, ultimate object of the scheme should be looked into. I would like to refer to the observations made by the Supreme Court in the case of Mukundlal Bhandari (supra) and relevant para-4 reads as under :-

"Para:4 Where the freedom fighters are not alive and their widows and the unmarried daughters have to prefer claim, the position may still be worse with regard to their knowledge of the prescribed date. What is more, if the Scheme has been introduced with the genuine desire to assist the honour those who had given the best part of their life for the country, it ill-behoves the Government to raise pleas of limitation against such claims. In fact, the Government, if it is possible for them to do so, should find out the freedom fighters or their dependents and approach them with the pension

instead of requiring them to make applications for the same. That would be the true spirit of working out such Schemes. The Scheme has rightly been renamed in 1985 as the Swatantra Sainik Sanman Pension Scheme to accord with its object. We, therefore, cannot countenance the plea of the Government that the claimants would only be entitled to the benefit of the Scheme if they made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifice and were thus otherwise qualified to receive the benefit. We are, therefore, of the view that whatever the date on which the claimants make the applications, the benefit should be made available to them. The date prescribed in any past or future notice inviting the claims should be regarded more as a matter of administrative convenience than as a rigid time-limit."

In view of the above ratio and the verdict of the Supreme Court, the contention raised by ld. AGP that if petition is allowed, the petitioner should be paid pension only from the date on which necessary requirements are complied, is also not acceptable. This petition, therefore, requires to be allowed.

In the result, petition is allowed. Respondent State is directed to accept the application of the husband of the petitioner for pension in light of the declaration made by (Resolution) the Government and is directed to finalise the exact amount of pension payable to the husband of the petitioner from the date of application and computation be made within a reasonable time and should be paid to the petitioner at the earliest, but not later than 3 months from the date of this judgment. Rule is made absolute accordingly. NO costs.

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